No. 25A810

In the Supreme Court of the United States

ELIZABETH MIRABELLI, *et al.*,

Applicants,

v.

ROB BONTA, ATTORNEY GENERAL OF CALIFORNIA, *et al.*,

Respondents.

RESPONDENTS' OPPOSITION TO EMERGENCY APPLICATION TO VACATE INTERLOCUTORY STAY ORDER

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TABLE OF CONTENTS

Page

Introduction 1

Statement 3

A. Legal background 3

B. Procedural history 8

Argument 14

I. Threshold obstacles to review and plaintiffs' litigation choices make this an exceptionally poor candidate for emergency relief 15

II. Plaintiffs have not satisfied the high standard for vacatur of an interim stay pending appeal 22

A. The district court's sweeping injunction oversteps the limits of Article III and Rule 23 22

B. Plaintiffs' claims require expanding constitutional doctrines well beyond existing precedent 29

C. The equitable factors tip sharply against relief 39

Conclusion 43

TABLE OF AUTHORITIES

Page

CASES

Alexander v. Carrington Mortg. Servs., LLC
23 F.4th 370 (4th Cir. 2022) 42

Am. Acad. of Pediatrics v. Lungren
16 Cal. 4th 307 (1997) 4

Blau v. Fort Thomas Pub. Sch. Dist.
401 F.3d 381 (6th Cir. 2005) 31

Califano v. Yamasaki
442 U.S. 682 (1979) 23

Certain Named & Unnamed Non-Citizen Children & Their Parents v. Texas
448 U.S. 1327 (1980) 15, 16, 22

City of Huntington Beach v. Newsom
2025 WL 3169324 (9th Cir. Sept. 12, 2025) 7

Clapper v. Amnesty Int'l USA
568 U.S. 398 (2013) 24

Coleman v. PACCAR Inc.
424 U.S. 1301 (1976) 22, 35

Dobbs v. Jackson Women's Health Org.
597 U.S. 215 (2022) 29

Doe No.1 v. Bethel Loc. Sch. Dist. Bd. of Educ.
2025 WL 2453836 (6th Cir. Aug. 26, 2025) 33

Does 1-3 v. Mills
142 S. Ct. 17 (2021) 18

Dubbs v. Head Start, Inc.
336 F.3d 1194 (10th Cir. 2003) 32

Foote v. Ludlow Sch. Comm.
128 F.4th 336 (1st Cir. 2025) 30, 31, 32

Fulton v. Philadelphia
593 U.S. 522 (2021) 36

TABLE OF AUTHORITIES
(continued)

Page

Garcia-Mir v. Smith
469 U.S. 1311 (1985) 22

Hernandez v. Tanninen
604 F.3d 1095 (9th Cir. 2010) 40

Hill v. Nat'l Collegiate Athletic Ass'n
7 Cal. 4th 1 (1994) 4

John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.
78 F.4th 622 (4th Cir. 2023) 24

Kanuszewski v. Mich. Dep't of Health & Hum. Serv.
927 F.3d 396 (6th Cir. 2019) 32

Lujan v. Defenders of Wildlife
504 U.S. 555 (1992) 23

Mahmoud v. Taylor
606 U.S. 522 (2025) 14, 19, 33, 34, 35, 40

Mann v. Cnty. of San Diego
907 F.3d 1154 (9th Cir. 2018) 32

Maryland v. King
567 U.S. 1301 (2012) 40

McBurney v. Young
569 U.S. 221 (2013) 31

Meyer v. Nebraska
262 U.S. 390 (1923) 30

Miller v. McDonald
2025 WL 3506969 (Dec. 8, 2025) 18

Moody v. NetChoice, LLC
603 U.S. 707 (2024) 28

Mueller v. Auker
700 F.3d 1180 (9th Cir. 2012) 32

TABLE OF AUTHORITIES
(continued)

Page

Murthy v. Missouri
603 U.S. 43 (2024) 25

NetChoice, LLC v. Fitch
145 S. Ct. 2658 (2025) 16, 39

New York v. Ferber
458 U.S. 747 (1982) 38

Nken v. Holder
556 U.S. 418 (2009) 23

Norwood v. Harrison
413 U.S. 455 (1973) 30

Parents for Privacy v. Barr
949 F.3d 1210 (9th Cir. 2020) 31

Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.
95 F.4th 501 (7th Cir. 2024) 24

Parham v. J. R.
442 U.S. 584 (1979) 32

Phyllis P. v. Super. Ct.
183 Cal. App. 3d 1193 (1986) 4

Pierce v. Society of Sisters
268 U.S. 510 (1925) 30

Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott
134 S. Ct. 506 (2013) 3, 15, 24, 29, 43

R.R. Comm'n of Tex. v. Pullman Co.
312 U.S. 496 (1941) 21

Regino v. Staley
133 F.4th 951 (9th Cir. 2025) 30

Reid v. Donelan
17 F.4th 1 (1st Cir. 2021) 27

TABLE OF AUTHORITIES
(continued)

Page

Rescue Army v. Mun. Ct.
331 U.S. 549 (1947) 22

Roberts v. U.S. Jaycees
468 U.S. 609 (1984) 38

Ruckelshaus v. Monsanto Co.
463 U.S. 1315 (1983) 40

Runyon v. McCrary
427 U.S. 160 (1976) 30

Sanchez v. Unemployment Ins. Appeals Bd.
20 Cal. 3d 55 (1977) 4

Schmidt v. Lessard
414 U.S. 473 (1974) 19

Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.
559 U.S. 393 (2010) 25

South Carolina v. Doe
146 S. Ct. 74 (2025) 15

Steel Co. v. Citizens for a Better Env't
523 U.S. 83 (1998) 19

Susan B. Anthony List v. Driehaus
573 U.S. 149 (2014) 24

Tandon v. Newsom
593 U.S. 61 (2021) 37

Tex. Democratic Party v. Abbott
140 S. Ct. 2015 (2020) 17

TransUnion LLC v. Ramirez
594 U.S. 413 (2021) 23, 25, 26

Troxel v. Granville
530 U.S. 57 (2000) 27

TABLE OF AUTHORITIES
(continued)

Page

Trump v. CASA, Inc.
606 U.S. 831 (2025) 2, 22, 23, 26

Tyson Foods, Inc. v. Bouaphakeo
577 U.S. 442 (2016) 23

United States v. Salerno
481 U.S. 739 (1987) 28

United States v. Skrmetti
605 U.S. 495 (2025) 17

Valentine v. Collier
141 S. Ct. 57 (2020) 16

W. Airlines, Inc. v. Int'l Brotherhood of Teamsters
480 U.S. 1301 (1987) 22

Wal-Mart Stores, Inc. v. Dukes
564 U.S. 338 (2011) 26

Wash. State Grange v. Wash. State Republican Party
552 U.S. 442 (2008) 28

Washington v. Glucksberg
521 U.S. 702 (1997) 2, 29, 31

Wisconsin v. Yoder
406 U.S. 205 (1972) 33

Yeshiva Univ. v. YU Pride All.
143 S. Ct. 1 (2022) 17

STATUTES, REGULATIONS, AND RULES

34 C.F.R. § 99.10 4

5 U.S.C. § 552a 37

18 U.S.C. § 1905 37

20 U.S.C. § 1232g(a)(1)(A) 4

TABLE OF AUTHORITIES
(continued)

Page

Assembly Bill No. 1955, 2023-2024 Reg. Sess. (Cal. 2024), 2024 Cal. Stat., ch. 95 7

Cal. Educ. Code
§ 215 6
§ 217(a)(1) 8
§ 217(b) 8
§ 49602 ..... 6, 20
§ 51101(a)(1) 6
§ 51101(a)(10) 6
§ 72621 ..... 6, 20

Fed. R. Crim. P. 6(e) 37

STATE CONSTITUTIONAL PROVISIONS

Cal. Const. art. I
§ 1 4
§ 7 5

OTHER AUTHORITIES

Cal. Assemb. Comm. on Educ., Report for June 26, 2024 Hearing on AB 1955 7

Cal. Dep't of Educ., *Model Youth Suicide Prevention Policy for Local Education Agencies that Service Kindergarten through Twelfth Grade Students* (Feb. 1, 2023) 6

Cal. Dep't of Educ., *Protections for LGBTQ+ Students: AB 1955* (Jan. 2, 2025) 8

Cal. Dep't of Justice, *Legal Alert: Forced Disclosure Policies* (Jan. 11, 2024) 4, 5, 6

W. Rubenstein, Newberg on Class Actions (6th ed. 2025) 25

INTRODUCTION

Efforts to balance parental interests and the needs of transgender students raise complex questions that policymakers across the country continue to weigh. In this case, the district court entered a sweeping permanent injunction that would require instant, dramatic changes from the status quo. Currently, under California's laws and constitutional provisions on privacy and antidiscrimination, schools may balance parental interests with students' particular needs and circumstances, such as the risk of harm upon disclosure of the student's gender identity without student consent. Although the district court's order is ambiguous in certain critical respects, it appears to categorically bar schools across the State from *ever* respecting a student's desire for privacy about their gender identity or expression—or respecting a student's request to be addressed by a particular name or pronouns—over a parent's objection. The district court's injunction would allow no exceptions, even for extreme cases where students or teachers reasonably fear that the student will suffer physical or mental abuse.

The court of appeals appropriately entered an interim stay pending appeal to prevent confusion, harm to students, and a massive change to the status quo. As the court of appeals recognized, the district court's injunction "is sweeping" and "ambiguous," App'x 12; "serious[ly] concern[ing]" with respect to Article III, *id.* at 6; "based on a lax enforcement of class certification principles," *id.* at 12; and "reli[ant] on a faulty reading of" the challenged state laws, *id.* Despite this Court's recent pronouncement that courts lack authority

to issue injunctions "broader than necessary to provide complete relief to each plaintiff with standing," *Trump v. CASA, Inc.*, 606 U.S. 831, 861 (2025), the injunction here would grant classwide relief to "every parent of California's millions of public school students and every public school employee in the state." App'x 6. The district court failed to assess whether all (or even most) of those class members have Article III standing. It also misunderstood the scope of state law. Far from categorically *forbidding* disclosure of information about students' gender identities to parents, the challenged state laws *allow*, and even *require*, disclosure in certain circumstances—in particular, where there is a risk of serious harm to the student. And in striking down those laws, the district court relied on dubious legal propositions that far exceed anything previously established by this Court. Indeed, the principal rationale for the district court's order was substantive due process—a doctrine that this Court has "always been reluctant to expand . . . because guideposts for responsible decisionmaking . . . are scarce and open-ended." *Washington v. Glucksberg*, 521 U.S. 702, 720 (1997) (internal quotation marks omitted).

Plaintiffs now ask the Court to grant "emergency relief" (Appl. 31) vacating the court of appeals' interim stay order. But there is no emergency here that would justify such an extraordinary step. Before the district court, plaintiffs withdrew their request for a classwide preliminary injunction against the State and litigated their new request for a classwide permanent injunction on an ordinary schedule that did not result in a hearing on their

motion until four months later. And plaintiffs have not even asked for expedited briefing and argument before the court of appeals. Granting relief in these circumstances would require the Court to depart from the high bar for vacating a stay, *see, e.g.*, *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 506 (2013) (Scalia, J., concurring in denial of application to vacate stay); to confront multiple threshold obstacles to relief, including serious questions of Article III standing, ambiguities in the injunction order, and disagreements among the parties regarding the scope of state law; to expand substantive due process and free exercise principles in novel, far-reaching ways; and to risk irreparable harm to students, teachers, and other school employees during the few months it takes to resolve the appeal. For many students, the consequences of compelling the disclosure of confidential information about their gender identity would be irreversible. The court of appeals acted responsibly, and equitably, in avoiding that harm before it has the opportunity to consider full briefing and argument.

STATEMENT

A. Legal Background

California law contains several provisions that could apply when a transgender student asks public school employees not to share information about their gender identity or their gender expression at school with their parents. Some are generally applicable privacy and antidiscrimination provisions; others are specific to the school context. Collectively, they allow disclosure to parents in some circumstances and limit disclosure in others.

And if a school has reason to believe that a student's health would be in serious jeopardy absent disclosure of the student's gender identity, the school has a duty to report information to parents. *See generally Phyllis P. v. Super. Ct.*, 183 Cal. App. 3d 1193, 1196 (1986) (duty to notify parents of harm to child).[1]

With respect to many of the relevant legal principles, no state appellate court has considered how they apply to questions regarding the disclosure of a student's gender identity. In 2024, the California Attorney General released a comprehensive legal alert on these issues, which reflects that office's views of the scope of state law in this area. *See* Cal. Dep't of Justice, *Legal Alert: Forced Disclosure Policies*, OAG-2024-02 (Jan. 11, 2024), https://tinyurl.com/5ahvubyz (Legal Alert). But the California judiciary, not the Attorney General, is the final arbiter of these state law questions. *See, e.g.*, *Sanchez v. Unemployment Ins. Appeals Bd.*, 20 Cal. 3d 55, 67 (1977).

One relevant doctrine is the California Constitution's Privacy Clause, Cal. Const. art. I, § 1, which confers rights that go beyond the protections of federal law. *See Am. Acad. of Pediatrics v. Lungren*, 16 Cal. 4th 307, 326, 334 (1997) (plurality); *Legal Alert* 3-4. Individuals have a constitutionally protected privacy interest in sensitive, personal information that is "'fundamental to personal autonomy.'" *Hill v. Nat'l Collegiate Athletic Ass'n*, 7

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[1] A federal statute called the Family Educational Rights and Privacy Act provides a right of access to education records. *See, e.g.*, 20 U.S.C. § 1232g(a)(1)(A); 34 C.F.R. § 99.10. Nothing in California state law, of course, purports to or could override that statutory right.

Cal. 4th 1, 34 (1994). In the Attorney General's view, information about a student's gender identity qualifies under this standard, and a student's privacy interest is cognizably burdened when a school discloses that information without student consent. *Legal Alert* 3-4. But burdens on a protected privacy interest do not automatically violate the Privacy Clause. *Id.* The permissibility of a burden depends on whether the *particular person* has a "reasonable expectation of privacy" and whether the *particular burden* is justified in light of a compelling government interest and the absence of a less restrictive alternative. *Id.*

The state Equal Protection Clause, Cal. Const. art. I, § 7, also supplies limits in this area. Discrimination on the basis of gender identity qualifies as a form of sex discrimination that triggers strict scrutiny under state law. *See Legal Alert* 1-2. The Attorney General has taken the position that forced disclosure policies constitute a form of facial sex discrimination. *Id.* Forced disclosure policies require school employees to notify parents when a student identifies as transgender, but not when a student identifies as cisgender. *Id.* at 1. In the Attorney General's view, those policies fail strict scrutiny because they are not narrowly tailored to achieve non-discriminatory interests, and they cause serious harm to students whom school districts have a duty to protect. *See id.* at 2-4 (discussing studies on harms).

In contrast, the state Equal Protection Clause does not bar schools from adopting facially neutral policies—for example, policies that allow disclosure

"when any student," cisgender or transgender, "is exhibiting symptoms of depression or other significant mental health issues." *Legal Alert* 2. Nor does it bar schools from adopting policies specific to transgender students that would satisfy strict scrutiny, such as allowing disclosure to protect students' well-being. *Id.* And it does not bar policies that "encourage students to inform their parents" about their situation and that "provide counseling and other support tools to help students initiate [such] conversations in the time and manner of the family's choosing." *Id.*

Additional state laws also bear on the disclosure of information about a student's gender identity in particular contexts. For example, information disclosed by a student aged 12 or older in the course of school counseling is confidential, unless disclosure to parents is "necessary to avert a clear and present danger to the health, safety, or welfare" of the pupil or "other persons living in the school community." Cal. Educ. Code §§ 49602, 72621. Local educational agencies must adopt suicide prevention policies that include provisions addressing circumstances requiring parental notification. *See id.* § 215; Cal. Dep't of Educ., *Model Youth Suicide Prevention Policy for Local Education Agencies that Service Kindergarten through Twelfth Grade Students*, at 17-18 (Feb. 1, 2023), https://tinyurl.com/3kde9w88. And state law allows parents to request and receive their child's school records and observe their child's classroom, which enables them to observe how their child is treated in class. Cal. Educ. Code § 51101(a)(1), (10).

The California Legislature's most recent enactment in this area is AB 1955, which took effect in January 2025. *See* Assembly Bill No. 1955, 2023-2024 Reg. Sess. (Cal. 2024), 2024 Cal. Stat., ch. 95, https://tinyurl.com/yy6ku2rv.[2] That law prohibits policies that require school employees to disclose the sexual orientation or gender identity of students without their consent, unless the disclosure is required by state or federal law. *Id.* §§ 5-6. But AB 1955 does not "forbid a school district from adopting a policy that employees *may* elect to make such disclosures." *City of Huntington Beach v. Newsom*, 2025 WL 3169324, at *2 (9th Cir. Sept. 12, 2025). In choosing this approach, the Legislature reviewed findings that "57% of LGBTQ youth reported . . . parental rejection," ranging from "mocking" to "physical abuse and being kicked out of the home"; that such rejection is associated with heightened risks of depression, suicide, substance abuse, and homelessness; and that forced disclosure policies deter LGBTQ students from seeking needed support at school. Cal. Assemb. Comm. on Educ., Report for June 26, 2024 Hearing on AB 1955 at 8, https://tinyurl.com/bde763zh. Students' fear of disclosure was so severe that, according to one study, 44% of LGBTQ students who experienced harassment at school did not report it due to fear that school officials would "out them to their family." *Id.*

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[2] The Ninth Circuit is considering challenges to AB 1955 in two pending appeals: *City of Huntington Beach v. Newsom*, No. 25-3826, and *Chino Valley Unified Sch. Dist. v. Newsom*, No. 25-3686.

AB 1955 also instructed the California Department of Education to update its resources for schools in this area. Cal. Educ. Code § 217(a)(1), (b). The Department responded by replacing a previous version of nonbinding guidance—a Legal Advisory and Frequently Asked Questions page posted on its website in 2016, *see* D.Ct. Dkt. 133, Exh. 26; App'x 8 n.2, 91-92—with updated nonbinding guidance, *see* Cal. Dep't of Educ., *Protections for LGBTQ+ Students: AB 1955* (Jan. 2, 2025), https://tinyurl.com/hc4jwxnk. The revised guidance closely tracks AB 1955. It explains that schools may not order school employees to disclose information concerning students' gender identity "unless . . . required by state or federal law." *Id.* At the same time, it makes clear that "AB 1955 does not mandate non-disclosure." *Id.* "AB 1955 does not specifically address whether a school employee may voluntarily disclose any information" regarding a student's gender identity to parents. *Id.*

B. Procedural History

1. This case began in April 2023, when two teachers sued officials of the Escondido Unified School District, arguing that the district's policy on disclosure of students' gender identities violated the teachers' free speech and free exercise rights. D.Ct. Dkt. 1; App'x 126-127. Because the district "suggested" to those teachers "that [its] gender identity policies may be required by California . . . law," and pointed to the California Department of Education's subsequently superseded 2016 online guidance on gender identity as "support [for] its suggestion," the teachers also sued members of the State Board of Education and the State Superintendent of Public Instruction. D.Ct.

Dkt. 1 at 10-12, 46. But the complaint expressly disclaimed any challenge to state law, stating that "Mrs. Mirabelli and Mrs. West do not contend that any provision of California law—whether in the Education Code or the California Constitution—violates the U.S. Constitution." *Id.* at 53. The district court granted a preliminary injunction preventing the defendants from enforcing the district's policy or the "policy described in the [Department's 2016] FAQs page on gender identity-related disclosures" against the two teachers who had sued. App'x 157-158. None of the defendants appealed that preliminary injunction, and it is not affected by the stay of the permanent injunction.

In January 2024, the teachers filed an amended complaint, which added the Attorney General as a defendant but again disclaimed any challenge to state law. D.Ct. Dkt. 80 at 10-11, 54. Later that year, in August 2024, plaintiffs filed a second amended complaint—the operative complaint for the remainder of the case—which for the first time included parents as plaintiffs (and added two more teachers), and for the first time challenged state law. Specifically, plaintiffs challenged an indeterminate set of state laws that they referred to as "the State's Parental Exclusion Policies." D.Ct. Dkt. 133 at 4, 8-9, 81, 121. Invoking, as relevant here, substantive due process, free exercise, and free speech protections under the federal constitution, the complaint contends that the "Parental Exclusion Policies" improperly withhold information from parents and restrict teachers' ability to communicate with parents in the ways that teachers prefer. D.Ct. Dkt. 133 at 87-121. Plaintiffs

sought to certify a class of all parents of children attending California public schools and all public school employees who "object" to the "Parental Exclusion Policies." D.Ct. Dkt. 244 at 2. The district court granted the motion, certifying a class with multiple subclasses: public school parents who "object to having Parental Exclusion Policies applied against them" or "who submit a request for a religious exemption or opt-out to having Parental Exclusion Policies applied against them," and public school employees "who object to complying with Parental Exclusion Policies" or "who submit a request for a religious exemption or opt-out to complying with Parental Exclusion Policies." App'x 89-90.

Although plaintiffs initially sought a class-wide preliminary injunction, they withdrew that request and asked the district court to enter summary judgment and grant permanent injunctive relief. D.Ct. Dkts. 219 at 2 n.1, 240, 247. Over five months passed between the filing of plaintiffs' new summary judgment motion and the district court's decision. *Compare* D.Ct. Dkt. 247 *with* App'x 26.

2. On December 22, 2025, the district court granted summary judgment, holding that the "parental exclusion policies"—which the opinion did not clearly define—violate several constitutional requirements. App'x 76-77. The opinion's primary focus was on substantive due process. *Id.* at 37-55. While recognizing "an absence of precedential rulings on the subject," *id.* at 40, the court concluded that a parent's "right to direct a child's education and . . . duty to provide for a child's health care," *id.* at 38, encompass a right to receive

information about their child's "incongruous expression of gender," *id.* at 44. As a second basis for relief, the court held that the policies violate parents' free exercise rights, explaining that "school policies that keep [parents] in the dark about things their schools are doing in conflict with their sincerely-held religious beliefs," *id.* at 57, are subject to strict scrutiny and fail that test, *id.* at 55-67. The court also concluded that public school employees have rights under the Free Speech and Free Exercise Clauses to disclose information to parents about a student's gender expression, and to refer to students using the teacher's preferred names and pronouns, regardless of the student's wishes. *See id.* at 67-75.

The court entered a permanent injunction with multiple provisions and sub-parts. App'x 22-25. Among other things, it bars state officials and "those persons in active concert or participation with them" from enforcing "the Privacy Provision of the California Constitution . . . [and] any other provision of California law, including equal protection provisions," as well as "any regulations or guidance," in ways that "permit or require any employee in the California state-wide education system [to] mislead[] [a] parent or guardian . . . about their child's gender presentation at school," including by "using a different set of preferred pronouns/names when speaking with the parents than is being used at school." *Id.* at 23-24. The order also prohibits officials from "permit[ting] or requir[ing] any employee in the California state-wide education system to use a name or pronoun to refer to [a] child that [does] not

match the child's legal name and natal pronouns, where a child's parent or legal guardian has communicated their objection to such use." *Id.* at 24. And it prohibits enforcement of any state law or policy that either (i) "require[s] any [school] employee . . . to use a name or pronoun to refer to a child" without first notifying the child's parents, "over the employee's conscientious or religious objection" or (ii) "in any way interfere[s]" with a school official's ability to inform a student's parents that the student "has manifested a form of gender incongruity." *Id.* The court directed the State to immediately include a statement in educator training materials that "[p]arents and guardians have a federal constitutional right to be informed if their public school student child expresses gender incongruence." *Id.* at 24-25. "Within 20 days" of the December 22 order, state officials were directed to notify "all personnel who are responsible for implementing" the challenged state laws of the injunction's terms. *Id.* at 24.

The injunction allows for no exceptions. *See* App'x 23-25. As a result, the State cannot prevent school officials from disclosing a transgender student's identity in any circumstances, regardless of the risk of individual harm that would occur. Teachers and school employees must also address children with names or pronouns per the parents' wishes even when doing so would seriously threaten the student's health or well-being.

3. Within hours of the ruling on December 22, defendants asked the district court for a stay pending appeal—or at least a short 14-day

administrative stay to allow defendants to seek a stay from the Ninth Circuit. D.Ct. Dkt. 309 at 2. The district court denied those requests on the morning of December 24, App'x 17, resulting in defendants' filing that evening a request for the Ninth Circuit to issue both a stay pending appeal and an interim administrative stay. C.A. Dkt. 7. On December 26, the court of appeals granted an administrative stay pending further order. App'x 16.

On January 5, the court of appeals issued an unpublished opinion staying the district court's order pending disposition of the appeal. App'x 1-13. The panel held that the State had shown "a substantial case for relief on the merits based on the sweeping nature of the district court's injunction, the dubious class certification," and the merits of the underlying claims. *Id.* at 10. It expressed "serious concerns" that the district court had exceeded its power under Article III by ordering relief to persons without standing, *id.* at 6, and had "failed to undertake the 'rigorous analysis' required by Rule 23," *id.* at 7. The court also emphasized that the district court misunderstood the relevant state laws, which are far less "categorical[]" than the district court believed, and that the injunction's terms failed to clearly identify "which particular policies are problematic." *Id.* at 8.

On the merits, the court of appeals focused on the weaknesses in the district court's analysis under substantive due process, a doctrine which "the Supreme Court has cautioned . . . [lower courts to] be 'reluctant to expand.'" App'x 9; *see id.* at 9-10. The court was also unpersuaded, "at this preliminary

stage," *id.* at 6, by the district court's "cursory" free exercise analysis, which "extended the reasoning of" this Court's recent decision in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), far beyond the circumstances of that case, App'x at 11. And the equitable factors likewise favored a stay. *Id.* at 12-13; *see, e.g., id.* ("Because the policies at issue do not categorically forbid disclosure of information about students' gender identities to parents without student consent, other parties in this action, including the Plaintiffs, will not be substantially injured from the issuance of a stay.").

4. On January 8, plaintiffs submitted their emergency request to this Court to vacate the Ninth Circuit's stay order. Later the same day, they filed a motion in the Ninth Circuit asking it to grant en banc review to reconsider the panel's stay decision. C.A. Dkt. 14. On January 16, the Ninth Circuit called for the State to file a response, which is due on February 6. C.A. Dkt. 16. As to the underlying appeal, the clerk's office set a briefing schedule pursuant to that court's default practices, which will allow the case to be fully briefed before the end of the current school year. C.A. Dkt. 2. Plaintiffs have not sought to expedite that schedule.

ARGUMENT

Plaintiffs ask this Court not only to prematurely insert itself into ongoing lower court proceedings, but to vacate an appellate court's decision to stay a district court permanent injunction pending appeal. That request is subject to a much higher bar than the one plaintiffs invoke in their application. *See* Appl. 17. While the Court has authority to vacate an interim stay by a court

of appeals, that authority should not be exercised "'except upon the weightiest considerations.'" *Certain Named & Unnamed Non-Citizen Children & Their Parents v. Texas*, 448 U.S. 1327, 1330 (1980) (Powell, J., in chambers). It is not enough to show that "[r]easonable minds can perhaps disagree about whether the Court of Appeals should have granted a stay in this case." *Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 507 (2013) (Scalia, J., concurring in denial of application to vacate stay). The Court does not "vacate a stay entered by a court of appeals unless that court clearly and 'demonstrably' erred in its application of 'accepted standards.'" *Id.* at 506. Plaintiffs have not shown any error, let alone the kind of "clear[] and 'demonstrabl[e]'" error, *id.*, that would warrant that extraordinary relief.

I. THRESHOLD OBSTACLES TO REVIEW AND PLAINTIFFS' LITIGATION CHOICES MAKE THIS AN EXCEPTIONALLY POOR CANDIDATE FOR EMERGENCY RELIEF

This Court has long been wary of granting emergency relief at the early stages of an appeal. *See, e.g.*, *South Carolina v. Doe*, 146 S. Ct. 74 (2025) (referring to the "standards applicable for obtaining emergency relief from this Court").[3] It has been especially reluctant to grant relief in an emergency

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[3] *See, e.g.*, *We The Patriots USA, Inc. v. Ventura Unified Sch. Dist.*, 146 S. Ct. 323 (2025); *Hess v. Oakland Cnty.*, No. 25A402 (denied Oct. 20, 2025) (Kavanaugh, J., in chambers); *Team Kennedy v. Berger*, 145 S. Ct. 115 (2024); *Oklahoma v. Dep't of Health & Hum. Serv.*, 145 S. Ct. 110 (2024); *Spectrum WT v. Wendler*, 144 S. Ct. 1053 (2024); *Students for Fair Admissions, Inc. v. U.S. Mil. Acad. at West Point*, 144 S. Ct. 716 (2024); *Nat'l Ass'n for Gun Rights* (continued…)

posture where, as here, the applicants seek vacatur of a stay pending appeal. *See, e.g.*, *NetChoice, LLC v. Fitch*, 145 S. Ct. 2658 (2025); *Antonyuk v. Nigrelli*, 143 S. Ct. 481 (2023); *Trump v. United States*, 143 S. Ct. 349 (2022).[4] "The bar for vacating a stay is high," *Valentine v. Collier*, 141 S. Ct. 57, 59 (2020) (Sotomayor, J., dissenting from denial of application to vacate stay), because "when a court of appeals has not yet ruled on the merits of a controversy, the vacation of an interim order invades the normal responsibility of that court to provide for the orderly disposition of cases on its docket," *Certain Named & Unnamed Non-Citizen Children & Their Parents*, 448 U.S. at 1330-1331 (Powell, J., in chambers).

Plaintiffs have not litigated this case in a way that shows any need for emergency vacatur. They filed this action in April 2023, but waited until August 2024 to begin challenging aspects of state law. *Supra* p. 9. Plaintiffs also requested or agreed to multiple scheduling extensions (as did the State), and eventually withdrew their motion for a class-wide preliminary injunction

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v. City of Naperville, 144 S. Ct. 538 (2023); *Griffin v. HM Fla.-ORL, LLC*, 144 S. Ct. 1 (2023); *R.J. Reynolds Tobacco Co. v. Bonta*, 143 S. Ct. 541 (2022); *Ward v. Thompson*, 143 S. Ct. 439 (2022); *Graham v. Fulton Cnty. Special Purpose Grand Jury*, 143 S. Ct. 397 (2022); *Does 1-3 v. Mills*, 142 S. Ct. 17 (2021).

[4] *See also, e.g.*, *Srour v. City of New York*, 144 S. Ct. 2557 (2024); *GRACE, Inc. v. City of Miami*, 144 S. Ct. 45 (2023); *Petteway v. Galveston Cnty.*, 144 S. Ct. 36 (2023); *Epic Games, Inc. v. Apple, Inc.*, No. 23A78 (denied Aug. 9, 2023) (Kagan, J., in chambers); *Louisiana v. Biden*, 142 S. Ct. 2750 (2022); *Coalition for TJ v. Fairfax Cnty. Sch. Bd.*, 142 S. Ct. 2672 (2022); *Democratic Nat'l Comm. v. Wisc. State Legislature*, 141 S. Ct. 28 (2020); *Raysor v. DeSantis*, 140 S. Ct. 2600 (2020); *Tex. Democratic Party v. Abbott*, 140 S. Ct. 2015 (2020).

and filed a new summary judgment motion. *E.g.*, D.Ct. Dkts. 43, 48, 115, 176, 184, 190, 196, 197, 202, 219 at 2 n.1, 223, 240, 247. Those choices delayed the district court's hearing on plaintiffs' summary judgment motion until November 2025. D.Ct. Dkt. 283. Even now, plaintiffs have not sought "to expedite consideration of the merits of their appeal," a far more modest step that parties should exhaust before seeking extraordinary relief from this Court. *Yeshiva Univ. v. YU Pride All.*, 143 S. Ct. 1, 1 (2022) (denying stay pending appeal where applicant failed to pursue other "avenues for expedited" relief).

Vacatur of the stay would be especially inappropriate because the case poses questions that are perhaps "weighty but [also] novel"—questions not appropriately addressed "for the first time [in this Court], in the context of an emergency application to vacate a stay." *Tex. Democratic Party v. Abbott*, 140 S. Ct. 2015, 2015 (2020) (Sotomayor, J., respecting denial of application to vacate stay); *see infra* pp. 29-39. That is presumably why plaintiffs have elsewhere taken the position that the issues presented in this appeal "should *not* be so quickly . . . decided on the emergency docket." C.A. Dkt. 14 at 19 (emphasis added). Even in cases resolved in the ordinary course, the Court often elects to avoid sweeping changes to existing doctrines or recognition of novel constitutional principles. *Cf. United States v. Skrmetti*, 605 U.S. 495, 517 (2025). The Court should be especially reluctant to take those steps when asked to weigh in on an expedited basis without full briefing and argument.

Nor have plaintiffs shown that this Court would be likely to grant certiorari later in this case—let alone that it should do so now. Appl. 33. The court of appeals' stay ruling is unpublished and nonprecedential. And there is no circuit conflict on the issues presented. In asserting that there is an "emerging split," *id.*, plaintiffs rely on lower-court dissents and concurring opinions, *see id.* at 33-34. The Court has recently denied multiple petitions presenting standing and substantive due process questions similar to those at issue here. *See Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.*, 145 S. Ct. 14 (2024) (No. 23-1280); *John & Jane Parents 1 v. Montgomery Cnty. Bd. of Educ.*, 144 S. Ct. 2560 (2024) (No. 23-601); *Lee v. Poudre Sch. Dist. R-1*, 2025 WL 2906469 (Oct. 14, 2025) (No. 25-89).[5] And any questions about the scope of this Court's decision in *Mahmoud v. Taylor*, 606 U.S. 522 (2025), require further development in the lower courts. *Cf. Miller v. McDonald*, 2025 WL 3506969 (Dec. 8, 2025) (No. 25-133) (vacating and remanding for consideration in light of *Mahmoud*). Plaintiffs should not be allowed to "use the emergency docket to force the Court to give a merits preview in" a case that it is "unlikely to take—and to do so on a short fuse without benefit of full briefing and oral argument." *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring in the denial of injunctive relief).

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[5] Other pending petitions presenting similar substantive due process questions have been relisted or rescheduled multiple times. *See Foote v. Ludlow Sch. Comm.*, No. 25-77 (relisted five times); *Littlejohn v. Sch. Bd. of Leon Cnty.*, No. 25-259 (rescheduled twice).

The Court would also encounter several threshold obstacles before it could even begin to entertain the relief requested by plaintiffs. First, it would have to resolve serious jurisdictional questions regarding plaintiffs' standing to seek relief from this (or any) Article III court. *See, e.g.*, *infra* pp. 23-25; *see Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95 (1998). If the Court were somehow able to assure itself of jurisdiction, it would then confront the question of what precisely the district court's injunction covers. Ambiguities in an injunction order "greatly complicat[e]" this Court's review because, "[u]nless [a] trial court carefully frames its orders of injunctive relief, it is impossible for an appellate tribunal to know precisely what it is reviewing." *Schmidt v. Lessard*, 414 U.S. 473, 477 (1974) (per curiam).[6]

In many respects, the injunction here is unclear. *Infra* pp. 19-20, 41-42. For example, the court never explained exactly which laws it intended to enjoin. The operative complaint requests relief as to "Parental Exclusion Policies," without specifying exactly which state laws are encompassed by that term. D.Ct. Dkt. 133 at 121. Plaintiffs use similar language in their application here. *See, e.g.*, Appl. 3, 4 ("California's policies"); Appl. 7, 8, 24 ("parental exclusion policies"). The district court likewise "failed to clearly identify the set of policies it relied on." App'x 8. The summary judgment

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[6] The ambiguities in the district court's order also present "basic fairness" concerns, as the Federal Rules of Civil Procedure require "explicit notice of precisely what conduct is outlawed" "to prevent uncertainty and confusion" and to avoid basing "a contempt citation on a decree too vague to be understood." *Schmidt*, 414 U.S. at 476.

opinion simply refers to the earlier preliminary injunction order for "more detail" on the challenged state-level policies. *Id.* at 32. That order, in turn, focused on the California Department of Education's 2016 FAQs page. *See id.* at 131-132, 152-154, 157-158; *see also id.* at 8 n.2 ("The district court's injunction appears largely premised on the informal 2016 Legal Advisory and FAQ page[.]"). But that nonbinding guidance "has been removed" and superseded by new nonbinding guidance. *Id.* at 8 n.2; *see supra* p. 8.

Beyond the superseded online guidance, the injunction bars the enforcement of "*any* . . . provisions of California law" and "*any* regulations or guidance" that would interfere with parental access to gender identity information. App'x 23 (emphasis added). That broad language has great potential for confusion and chaos. For example, it leaves school officials to wonder whether the injunction reaches generally applicable provisions of the California Education Code, such as provisions that guarantee confidentiality in school counseling sessions. *See* Cal. Educ. Code. §§ 49602, 72621; *supra* p. 6. School officials would also be confused about whether the injunction covers AB 1955, the recently enacted law, *supra* p. 7, that bars school districts from mandating disclosure of information about students' gender identities. *Compare* App'x 23 (injunction prohibiting enforcement of "any other provision of California law"), *with id.* at 33 (statement in summary judgment opinion that "this case is not about [AB 1955]").

As to the few state laws the plaintiffs and district court did clearly identify, such as the California Constitution's Privacy Clause, their understanding of those laws differs markedly from the State's. Resolving that disagreement would pose another threshold obstacle to relief. The district court's ruling was premised on its belief that the State is "'prohibiting public school teachers from informing parents of their child's gender identity' through its 'parental exclusion' policies." App'x 8; *see also, e.g.*, App'x 28, 32, 66-67. Plaintiffs make the same representation here. *See, e.g.*, Appl. 1 (claiming state law "requir[es] public schools to hide children's expressed transgender status at school from their own parents"). But the Ninth Circuit's "preliminary review of the record" led it to agree with the State that California law "does not categorically forbid disclosure of information about students' gender identities to parents without student consent." App'x 8. In many circumstances, school employees are allowed to make such disclosures—and sometimes *required* to do so. *See supra* pp. 3-8.

At a minimum, this fundamental disagreement about the scope of state law—not only between the parties, but between the district-court judge and the three members of the assigned court of appeals panel—counsels strongly against the district court's injunction taking immediate effect while the appellate court's examination continues. To promote "'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary," *R.R. Comm'n of Tex. v. Pullman Co.*, 312 U.S.

496, 501 (1941), federal courts endeavor to "stay[] [their] hands," *id.*, when confronted with questions of state law that are "far from clear," *id.* at 499; *see also Rescue Army v. Mun. Ct.*, 331 U.S. 549, 583-585 (1947).

II. PLAINTIFFS HAVE NOT SATISFIED THE HIGH STANDARD FOR VACATUR OF AN INTERIM STAY PENDING APPEAL

In addressing whether the court of appeals was "demonstrably wrong in its application of accepted standards in deciding to issue [a] stay," *Coleman v. PACCAR Inc.*, 424 U.S. 1301, 1304 (1976) (Rehnquist, J., in chambers), the Court evaluates the likelihood that "a majority of the Court eventually will agree with the District Court's decision," as well as the relative harms to the parties and the public interest, *Certain Named & Unnamed Non-Citizen Children & Their Parents*, 448 U.S. at 1330-1331 (Powell, J., in chambers); *see also W. Airlines, Inc. v. Int'l Brotherhood of Teamsters*, 480 U.S. 1301, 1305 (1987) (O'Connor, J., in chambers). And the Court accords "great deference" to the "stay granted by a court of appeals." *Garcia-Mir v. Smith*, 469 U.S. 1311, 1313 (1985) (Rehnquist, J., in chambers). Here, there are many procedural and substantive flaws in the district court's order—and the equities and public interest strongly counsel against vacating the court of appeals' interim stay.

A. The District Court's Sweeping Injunction Oversteps the Limits of Article III and Rule 23

Plaintiffs barely address (Appl. 24-25) the basis for the court of appeals' stay order that affects every one of their claims: "serious concerns" that the district court's broad, categorical injunction violates Article III and defies fundamental limits on class relief. App'x 6-8 (citing, *e.g.*, *Trump v. CASA, Inc.*,

606 U.S. 831, 868 (2025) (Alito, J., concurring)). In the face of those well-founded concerns, the circuit court reasonably acted to "'suspend judicial alteration of the status quo.'" *Nken v. Holder*, 556 U.S. 418, 429 (2009).

1. District courts lack authority to issue injunctions that "are broader than necessary to provide complete relief to each plaintiff with standing to sue." *CASA*, 606 U.S. at 861 (majority). The certification of a class does not diminish this requirement: "'Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not.'" *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021) (quoting *Tyson Foods, Inc. v. Bouaphakeo*, 577 U.S. 442, 466 (2016) (Roberts, C. J., concurring)); *see Califano v. Yamasaki*, 442 U.S. 682, 701 (1979) ("Where the district court has jurisdiction over the claim of *each individual member of the class*, Rule 23 provides a procedure by which the court may exercise that jurisdiction over the various individual claims in a single proceeding." (emphasis added)).

Here, the district court entered a sweeping injunction—which accords relief to "every parent of California's millions of public school students and every public school employee in the state." App'x 6. The court provided no basis for holding that all or even most of those individuals have a current or impending injury that would be redressed by the injunction. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992). There are over 5.8 million public school students in the State and several hundred thousand teachers. App'x 83. The fact that the certified class includes "only" parents and public

school employees who "object to" the challenged policies (Appl. 7) is not a meaningful limitation. Any individual who takes advantage of the injunction necessarily objects to the enjoined policies, and plaintiffs do not dispute that every public school parent and school employee in the State of California can seek relief under the district court's class certification and injunction.[7]

The vast majority of public school parents face no "'certainly impending'" injury from the challenged policies, because they cannot show a "'substantial risk'" that their children will identify as transgender—let alone express that identity at school, ask that their parents not be told, and have that request respected. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014); *see Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013). At the very least, the court of appeals did not "clearly and 'demonstrably' err[]," *Planned Parenthood*, 134 S. Ct. at 506 (Scalia, J., concurring), in recognizing that many of those covered by the district court's injunction would lack standing. "Courts across the country . . . have routinely rejected similar claims by parents and teachers due to lack of standing." App'x 6 (collecting examples); *see, e.g., Parents Protecting Our Children, UA v. Eau Claire Area Sch. Dist.*, 95 F.4th 501, 503, 505-506 (7th Cir. 2024), *cert. denied*, 145 S. Ct. 14 (2024); *John &*

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[7] Plaintiffs assert that the class certification order "found that all class members have materially identical Article III injury." Appl. 24 (citing App'x 83). But the cited portion of the order says nothing of the kind—and certainly provides no sensible basis for concluding that all (or even most) of the millions of parents and teachers covered by the class have demonstrated standing.

Jane Parents 1 v. Montgomery Cnty. Bd. of Educ., 78 F.4th 622, 629-631 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2560 (2024).

Before the court of appeals, plaintiffs argued that Article III is satisfied so long as a handful of named class members have standing. *See* C.A. Dkt. 11 at 15-16. But that view is contrary to not only this Court's clear precedent, *see TransUnion*, 594 U.S. at 431, but also longstanding rules governing class certification and relief. A class action is a claims-aggregating device: it "merely enables a federal court to adjudicate claims of multiple parties at once" and "leaves the parties' legal rights and duties intact and the rules of decision unchanged." *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 559 U.S. 393, 408 (2010) (plurality opinion of Scalia, J.); *see* 1 W. Rubenstein, Newberg on Class Actions § 1:1 (6th ed. 2025). Plaintiffs' approach would violate that rule. It would alter the rule of decision by eliminating the need for millions of people to demonstrate standing.

In any case, "'standing is not dispensed in gross,'" *Murthy v. Missouri*, 603 U.S. 43, 61 (2024), and plaintiffs have not persuasively shown that even the named class representatives have standing for each of their claims and each form of relief provided by the district court. For example, two of the parent plaintiffs (Jane and John Poe) sought an order forcing school employees to divulge information about their child's gender presentation at school. *See* D.Ct. Dkt. 247 at 3-5. But because their child and school officials have already given them that information, they have known for more than two years that their

child identifies as transgender and uses a name and pronouns consistent with that identity at school. D.Ct. Dkt. 247-6 at 4, 6-8. "An 'asserted informational injury that causes no adverse effects cannot satisfy Article III.'" *TransUnion*, 594 U.S. at 442. Other class representatives lack standing for additional reasons. *See, e.g.*, D.Ct. Dkt. 247-2 at 2, 18-19 (discussing how one of the teacher plaintiffs sought an injunction allowing teachers to divulge information about students, even though she has retired and has no concrete plans to resume teaching); D.Ct. Dkt. 256 at 5-8 (raising standing objections to other named plaintiffs).

2. The injunction also violates other well-established rules governing class actions. App'x 7-8. Absent "scrupulous adherence to the rigors of Rule 23," "the universal injunction will return from the grave under the guise of 'nationwide class relief,' and [*CASA*] will be of little more than minor academic interest." *CASA*, 606 U.S. at 868 (Alito, J., concurring). That is exactly what happened here.

The basis for the district court's sweeping class-certification order—Rule 23(b)(2), *see* App'x 89—requires a showing that *each* class member's claims for injunctive relief can be resolved on an undifferentiated basis "in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011); *see id.* at 360-361. The district court made no meaningful attempt to satisfy that high bar. For relief to be justified for the millions of people covered by the injunction, the district court would necessarily have had to conclude that strict scrutiny

applied and that public schools' withholding of information and use of a child's preferred name or pronouns had no justification that could satisfy strict scrutiny. But such determinations require more individualized consideration than the district court's categorical order reflects. For example, if the challenged laws implicate substantive due process rights, *but see infra* pp. 29-32, it would be necessary to consider a wide range of factual circumstances in assessing when, if ever, those rights are unjustifiably infringed—including the student's age and maturity, and whether disclosure would severely harm the child. Moreover, even if the district court could have theoretically resolved some subset of legal questions in this case on a class-wide basis, it had no authority to "us[e] a properly certified class as a bootstrap to then adjudicate, on a class-wide basis, claims that hinge on the individual circumstances of each class member." *Reid v. Donelan*, 17 F.4th 1, 11 (1st Cir. 2021).

Plaintiffs argue that the broad injunction was justified because they seek facial relief, and "across-the-board restrictions on parental rights are particularly appropriate for facial invalidation." Appl. 24. But the policies at issue are not "across-the-board restrictions." The relevant state laws allow disclosure to parents in multiple circumstances. *Supra* pp. 3-8. Plaintiffs also wrongly imply that requirements for facial relief are relaxed for cases implicating parental rights. The main case that plaintiffs invoke repeatedly stated that the Court was holding a law unconstitutional only "as applied" to the individual parties in light of the specific "factors" before it. *Troxel v.*

Granville, 530 U.S. 57, 68 (2000); *see id.* at 65, 67. The proper standard for facial relief requires showing that "no set of circumstances exists under which the [laws] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987).[8]

Neither the district court nor plaintiffs have made any attempt to satisfy the *Salerno* standard. Nor could they: there are a vast number of applications that would be constitutional under any applicable form of review, including strict scrutiny. Record evidence shows that significant numbers of students would be subjected, not just to their parents' disapproval, but to grave harm if information on their gender identity were disclosed without consent. *See, e.g.*, D.Ct. Dkt. 256-2, Exh. 2 (Brady Expert Report) at 12-13, 19-26, 34-35. Yet the district court's order requires disclosure even then. *Supra* p. 12. There is also compelling evidence that children would be harmed if teachers were forced to refer to them by names or pronouns that do not match their identity. *See, e.g.*, D.Ct. Dkt. 256-2, Exh. 2 (Brady Expert Report) at 17-18, 26-27 (describing mental, social, and academic harms). The district court's overbroad remedy is precisely what *Salerno*'s well-established standard is intended to prevent. *See generally Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442,

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[8] Although a different standard sometimes applies to free speech claims, *see Moody v. NetChoice, LLC*, 603 U.S. 707, 718 (2024), plaintiffs do not renew their free speech challenge before this Court. *See* D.Ct. Dkt 247-1 at 31-36. In any event, plaintiffs have never attempted to meet the First Amendment overbreadth standard, which is still demanding: it requires a showing that "the law's unconstitutional applications substantially outweigh its constitutional ones." *Moody*, 603 U.S. at 724.

451 (2008) ("facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution").

B. Plaintiffs' Claims Require Expanding Constitutional Doctrines Well Beyond Existing Precedent

On the merits, plaintiffs' claims would require extending current precedent far beyond existing bounds. That, too, supports the court of appeals' stay pending full consideration of the case. *See Planned Parenthood*, 134 S. Ct. at 506 (Scalia, J., concurring) (where a "constitutional question" is "'difficult,'" that "cuts *against* vacatur [of a stay pending appeal], since the difficulty of a question is inversely proportional to the likelihood that a given answer will be clearly erroneous").

1. Although the "primar[y]" ground for the district court's decision was its substantive due process holding, App'x 9; *see id.* at 37-55, plaintiffs address that only as a secondary matter, *see* Appl. 26-30. Their reticence is understandable. As this Court has cautioned, substantive due process is a "'treacherous field'" that has "led the Court to usurp authority that the Constitution entrusts to the people's elected representatives." *Dobbs v. Jackson Women's Health Org.*, 597 U.S. 215, 239-240 (2022). The Court accordingly "'exercise[s] the utmost care whenever [it is] asked to break new ground' . . . , lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the Members of this Court." *Glucksberg*, 521 U.S. at 720. With respect to the parents' asserted information

interest and their attempt to control how their children are addressed at school, the district court's substantive due process ruling required it to break ground well beyond the terrain of anything previously decided by this Court.

To support their claim of a substantive due process right to receive information, plaintiffs invoke *Meyer v. Nebraska*, 262 U.S. 390 (1923). Appl. 26. But in the century since that case and *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), were decided, the Court has consistently emphasized their "limited scope." *Norwood v. Harrison*, 413 U.S. 455, 461 (1973). "*Meyer* and its progeny" afford parents the right "to send their children to a particular private school rather than a public school," and "no more." *Runyon v. McCrary*, 427 U.S. 160, 177 (1976). No decision of this Court has expanded those precedents to embrace a right to receive particular information from a public school. And courts of appeals have repeatedly held that "mere nondisclosure of information" does not implicate or infringe a fundamental parental right for purposes of substantive due process. *Foote v. Ludlow Sch. Comm.*, 128 F.4th 336, 354 (1st Cir. 2025) (collecting cases), *petn. for cert. pending* (No. 25-77).

Even if the Court recognized such a right, moreover, the court of appeals did not demonstrably err in concluding that the State's policies do not burden that right. *See Regino v. Staley*, 133 F.4th 951, 962 (9th Cir. 2025) ("'identifying a general parental right is far different than concluding that it has been infringed'"). The relevant aspects of California law do nothing to restrain parents and children from speaking freely with each other whenever

and however they like. *See Glucksberg*, 521 U.S. at 720 (substantive due process protects against "government interference" with fundamental rights); *Foote*, 128 F.4th at 353 (similar, collecting cases). Parents also may gather information by exercising their rights to visit their child's classroom and receive their child's educational records. *Supra* p. 4 n.1, 6. Recognition of a new constitutional right in this area would threaten to unduly interfere with school administration. *See, e.g.*, *Blau v. Fort Thomas Pub. Sch. Dist.*, 401 F.3d 381, 395-396 (6th Cir. 2005). It would also threaten to transform substantive due process doctrine into a constitutionally prescribed "Freedom of Information Act"—but even broader, encompassing disclosure of information well beyond government records. *But see McBurney v. Young*, 569 U.S. 221, 232 (2013) (""The Constitution itself is not a Freedom of Information Act."" (brackets omitted)). In light of these consequences, lower courts have been especially reluctant to expand substantive due process in the context of public schools. *See, e.g.*, *Blau*, 401 F.3d at 396 (collecting cases rejecting parental substantive due process challenges to public school policies); *Parents for Privacy v. Barr*, 949 F.3d 1210, 1233 (9th Cir. 2020), *cert. denied*, 141 S. Ct. 894 (2020).

Plaintiffs similarly seek an extension of substantive due process precedent in claiming that parents have a right to control school employees' preferred approach for referring to students who identify as transgender. Plaintiffs base their claim on the rights that parents have to direct their

children's medical treatment. Appl. 29-30. But decisions implementing that right have concerned medical procedures, examinations, or hospitalization. *See, e.g.*, *Parham v. J. R.*, 442 U.S. 584, 603 (1979) (hospitalization for mental illness).[9] Respecting a transgender person's request to be called by a name and pronouns consistent with their gender identity involves nothing of the kind; it need not be prescribed, performed, or supervised by a medical professional, and is not regulated as part of the practice of medicine. Although social transition is sometimes recommended by medical professionals to alleviate symptoms of gender dysphoria, it does not follow that every layperson who uses a transgender person's chosen name and pronouns is providing medical treatment. *See, e.g.*, *Foote*, 128 F.4th at 350; App'x 9-10. Doctors also sometimes recommend exercise and sleep. But that does not transform recess or naptime at school into medical treatment that parents have a substantive due process right to control.

2. Plaintiffs now focus not on substantive due process but on free exercise, arguing that when school employees respect a transgender student's request for confidentiality or preference for a particular form of address, that imposes an unacceptable burden on parents' free exercise rights. Appl. 18-20. But

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[9] *See also Kanuszewski v. Mich. Dep't of Health & Hum. Serv.*, 927 F.3d 396, 420 (6th Cir. 2019) (retention of blood samples for disease screening); *Mann v. Cnty. of San Diego*, 907 F.3d 1154, 1160-1161 (9th Cir. 2018) (medical examinations); *Mueller v. Auker*, 700 F.3d 1180, 1186-1189 (9th Cir. 2012) (administration of antibiotics and spinal tap); *Dubbs v. Head Start, Inc.*, 336 F.3d 1194, 1199-1204 (10th Cir. 2003) (medical examinations and blood tests).

while plaintiffs mainly rely on *Mahmoud v. Taylor*, 606 U.S. 522 (2025), the district court's injunction sweeps beyond anything *Mahmoud* could conceivably support. *See Mahmoud*, 606 U.S. at 557 (recognizing need to undertake "close analysis of the facts in the record" before granting relief); *Doe No.1 v. Bethel Loc. Sch. Dist. Bd. of Educ.*, 2025 WL 2453836, at *7 n.3 (6th Cir. Aug. 26, 2025) (*Mahmoud* does not "stand[] for the broad proposition that strict scrutiny is automatically triggered when a school does not allow religious students to opt out of any school policy that interferes with their religious development").[10]

In *Mahmoud*, a school district subjected children to "unmistakably normative" books, 606 U.S. at 550, which "impose[d] upon children a set of values and beliefs," *id.* at 554, that "explicitly contradict[ed] their parents' religious views," *id.* at 555. The school encouraged teachers "to reprimand any children who disagree[d]," *id.* at 556, or who "express[ed] a degree of religious confusion," *id.* at 555. The Court applied strict scrutiny, stressing "the potentially coercive nature of classroom instruction of this kind." *Id.* at 554; *see id.* (concluding the books exerted on the children "psychological 'pressure to conform' to their specific viewpoints"). This case features nothing similar.

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[10] The State does not contend, and the Ninth Circuit did not hold, that *Mahmoud*'s free exercise framework can never extend beyond "'curricular requirements.'" Appl. 19. In *Doe No.1*, which the panel's stay order here invokes, the Sixth Circuit relied on *Mahmoud*'s determination that a burden on parents' free exercise rights triggers strict scrutiny where it is "'of the [] same character as the burden in [*Wisconsin v. Yoder*, 406 U.S. 205 (1972)].'" *Doe*, 2025 WL 2453836, at *7 (quoting *Mahmoud*, 606 U.S. at 565). Nothing in the court of appeals' stay order suggests that it applied a different standard.

As the court of appeals recognized, *see* App'x 11, the challenged policies do not coerce students in any way. Any state law that might limit disclosure—for example, the California Constitution's Privacy Clause—would come into play only when a *student* makes the voluntary decision to share with school officials that they are transgender, asks school officials to use a name and pronouns consistent with their gender identity, and requests that school officials refrain from disclosing that information to parents. *See* App'x 11; *supra* pp. 3-8.

Mahmoud also emphasized that "the age of the children involved is highly relevant in any assessment of the likely effect of instruction on the subjects in question." 606 U.S. at 555 n.8. The curriculum struck down in *Mahmoud* was directed only at "young children" in kindergarten through fifth grade. *Id.* at 533. The district court's injunction here, by contrast, forbids the application of state protections to much older students—up to the day before their eighteenth birthday—who are plainly able to develop their own views without reference to school "authority figures." *Id.* at 554; *see id.* at 555 n.8 (differentiating "young children" from "high school students"). The named parent plaintiffs' children, for example, are at least 15 and 16 years old. D.Ct. Dkts. 247-6 at 2, 247-8 at 2. And while *Mahmoud* concerned the explicit teaching of moral lessons, the laws that plaintiffs attack do nothing similar. They merely impose nuanced, individualized standards governing disclosure and the use of names or pronouns at a student's request. *Supra* pp. 3-8.

Construing *Mahmoud* as plaintiffs do would lead to untenable results. Parents could assert a free exercise right to forbid public schools from serving a 17-year-old lunch items that the student asks for but the parents' religion forbids. Parents could also require public schools to enforce against rebellious teenagers the parents' restrictions on dating or the parents' religious dress codes, such as the wearing of head coverings. Neither *Mahmoud* nor any other decision of this Court hints at any intent to impose such duties at a constitutional level. The court of appeals acted reasonably in staying the district court's sweeping, statewide expansion of public schools' constitutional obligations until plaintiffs' claims could receive full appellate consideration. There is no reason to upset that balance at this preliminary juncture.

3. The teacher plaintiffs' free exercise claims also provide no basis for lifting the stay. Plaintiffs argue that teachers have a right "to opt out" of a nondisclosure policy, or a policy respecting forms of addressing a transgender student, if adherence to the policy would violate teachers' sincerely held religious beliefs. Appl. 18. But as noted above, *supra* at p. 12, the district court's far-reaching injunction grants relief to teachers whose reason for objecting is not even religious. *See* App'x 24 (injunction applies to "any employee" asserting "*conscientious* or religious objection" (emphasis added)). It was not "demonstrably wrong," *Coleman*, 424 U.S. at 1304 (Rehnquist, J., in

chambers), for the court of appeals to pause, pending appeal, an order that extends so far beyond the doctrine on which it is based.[11]

Even as to teachers whose objections are religious, plaintiffs' application provides no basis for second-guessing the court of appeals' stay ruling. Plaintiffs' argument is that "the Privacy Clause of the California Constitution . . . is rife with 'individualized exemptions[.]'" Appl. 20. What plaintiffs mean by "individualized exemptions" is that the Privacy Clause—much like many other state and federal constitutional rights—allows the State to justify a burden on the applicable right by satisfying strict scrutiny on an individualized basis. *See id.*; *see also supra* pp. 4-5. But petitioners identify no precedent of this Court that has subjected a generally applicable state constitutional doctrine to strict scrutiny on that theory. And there would be no sensible reason to do so. Far from providing any "system of individual exemptions," *Fulton v. Philadelphia*, 593 U.S. 522, 535 (2021), California's privacy doctrine subjects all teachers and employees to the same standard: whether a disclosure that burdens the student's reasonable expectation of privacy is justified by a compelling state interest. *Supra* pp. 4-5. And neither plaintiffs nor the district court have identified any way in which the challenged

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[11] At this Court, plaintiffs make no claim that the teachers' free speech rights support the lifting of the stay. That makes the free speech arguments that plaintiffs raised below—and the corresponding portion of the district court's opinion—irrelevant. *See* App'x 73-75; D.Ct. Dkt. 247-1 at 31-36.

privacy doctrine treats "comparable secular activity more favorably than religious exercise." *Tandon v. Newsom*, 593 U.S. 61, 62 (2021).

Once again, the consequences threatened by the district court's views are vast. Many federal and state laws require government employees to maintain, subject to specific exceptions, the privacy of information that they learn in their employment. *See, e.g.,* 5 U.S.C. § 552a; 18 U.S.C. § 1905; Fed. R. Crim. P. 6(e). Petitioners cite no case holding that strict scrutiny applies whenever such a law allows disclosure in *some* circumstance without also exempting employees based on their religious objections. And as a general matter, giving employees the ability to opt-out based on their individual religious views would often pose a significant obstacle to any scheme whose purpose is confidentiality. At the very least, the existence of such opt-out rights would make the confidentiality of information unpredictable and unreliable—disincentivizing individuals (such as vulnerable students) from sharing sensitive information, and making it difficult or impossible for the government to collect information that policymakers believe deserves protection. Given the change that the district court's reasoning could work to confidentiality provisions far and wide, the

court of appeals was not demonstrably wrong to conclude that the extension of precedent required by plaintiffs' claims would be unlikely to succeed.[12]

4. Because strict scrutiny does not apply, plaintiffs' substantive due process and free exercise claims are subject to rational-basis review. And plaintiffs do not dispute that the challenged law would satisfy that deferential standard. Even if strict scrutiny were to apply, however, plaintiffs could not show that they have the type of indisputable right to relief that would support vacating the stay entered by the court of appeals.

To the extent that application of state laws would bar disclosure of students' gender identities, or require teachers to use students' preferred names or pronouns, those applications advance compelling state interests in protecting the safety and well-being of transgender students, and in fostering a school environment in which they can thrive. *Cf. New York v. Ferber*, 458 U.S. 747, 756-757 (1982) (compelling interesting in "'safeguarding the physical and psychological well-being of a minor'"); *Roberts v. U.S. Jaycees*, 468 U.S. 609, 623 (1984) (compelling interest in "eradicating discrimination"). And the laws at issue are narrowly tailored: As detailed above, *supra* pp. 3-8, California law takes a nuanced, balanced approach in this area. It bars facially

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[12] Yet a further difficulty is lurking in the district court's opinion: if both the parent and teachers have the free exercise rights they claim, then what result would obtain when a parent's religion compels respect for a child's transgender identity but a teacher's religion compels otherwise? Neither plaintiffs nor the district court make any effort to grapple with the constitutional difficulties such a collision of interests would present.

discriminatory policies on equal protection grounds and limits disclosure in some circumstances on privacy grounds. But it allows, and sometimes even requires, disclosure where the failure to disclose would threaten serious harm to a child's health or well-being.

Plaintiffs' proposal that the State require individualized "judicial [fact] finding" on the risk of harm before restricting disclosure to parents (Appl. 23 (emphasis omitted)) is not a viable alternative. Doing so would effectively reveal the student's gender identity to their parents and would chill students from expressing their identities at school, as it would be difficult for students to know in advance whether the information would be conveyed to their parents despite the student's lack of consent. Plaintiffs also contend that the State should content itself with a "mandatory reporting regime" to respond to and punish child abuse. Appl. 23. But the State is seeking to *prevent* potential abuse. Reporting abuse after it happens is plainly not a workable substitute.

C. The Equitable Factors Tip Sharply Against Relief

Plaintiffs also fail to show that "the balance of harms and equities favor [them] at this time." *NetChoice*, 145 S. Ct. at 2658 (Kavanaugh, J. concurring). Plaintiffs' primary argument is that, if they are correct about the merits of their claims, then "'the loss of [their] First Amendment freedoms'" during the pendency of the appeal is by itself irreparable injury. Appl. 31 (quoting *Mahmoud*, 606 U.S. at 569). That argument, however, adds little here given the substantial reasons to believe that plaintiffs' First Amendment claims will fail, or at least sweep far more narrowly than the scope of the district court's

injunction. *See supra* pp. 32-39. Plaintiffs also fail to explain how parental claims to receive information are irreparable in light of the many other paths to obtaining information that would be open under federal and state law even in the absence of the injunction—such as the exercise of statutory rights to examine school records and observe children's classrooms, *supra* pp. 4 n.1, 6, or having conversations with their children about gender identity and expression. And as discussed above, *supra* pp. 16-17, plaintiffs have litigated this case on an ordinary, unhurried timetable; they have not proceeded as if they face irreparable harm in need of emergency relief. *See Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1318 (1983) (Blackmun, J., in chambers) ("failure to act with . . . dispatch" "blunt[s] [any] claim of urgency and counsels against the grant of" relief).

In contrast, vacating the stay would cause truly irreparable harm. "'[A]ny time a State is enjoined by a court from effectuating statutes enacted by representatives of its people, it suffers a form of irreparable injury.'" *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). The district court's injunction also threatens the immediate exposure of information that students have chosen to disclose to their school under assurances of confidentiality—information that, once exposed, could not later be clawed back even if the district court's order were overturned. *Cf. Hernandez v. Tanninen*, 604 F.3d 1095, 1101 (9th Cir. 2010) ("'an appeal after disclosure'" does not

vindicate the "'irreparable harm a party likely will suffer if erroneously required to disclose privileged materials or communications'").

According to testimony in the record, exposing that information threatens "significant psychological, emotional, and sometimes even physical harm" to students. *E.g.*, D.Ct. Dkt. 256-2, Exh. 2 (Brady Expert Report) at 5; *see also id.* at 12-13, 19-26, 34-35; D.Ct. Dkt. 256-3, Exh. 2 (Tando Expert Report) at 16-21; D.Ct. Dkt 256-4 (Al-Shamma Decl.) at 9-12. The risk of being outed to parents can also deter vulnerable students from seeking help from school officials when they face bullying or harassment. *E.g.*, D.Ct. Dkt. 256-4 (Al-Shamma Decl.) at 10-12; D.Ct. Dkt. 256-2, Exh. 2 (Brady Expert Report) at 13, 26-27. And there would be no way to avoid these harms without violating the court's order, since the order allows no exceptions, even where students face a clear risk of abuse or self-harm as a result of disclosure. *See* App'x 13 ("public interest in protecting students" favors a stay).

Finally, the "sweeping, ambiguous" terms of the injunction would inject substantial confusion into the administration of California's schools. App'x 12-13. Nearly 300,000 teachers, as well as counselors, administrators, and other public school employees across the State, will be left to decipher exactly which laws are enjoined and what exactly they must do (or refrain from doing) to comply with the injunction's vague terms. Beyond the ambiguities discussed above, *see supra* pp. 19-20, the injunction and accompanying summary judgment order provide no explanation of what it means for state officials

"to . . . *permit* or require any employee in the California state-wide education system" to refrain from disclosing information about students' gender identity or "to . . . *permit* or require" school employees to use pronouns or names when referring to students contrary to parents' wishes. App'x 24 (emphasis added). "Permit" is a highly ambiguous term. *See, e.g.*, *Alexander v. Carrington Mortg. Servs., LLC*, 23 F.4th 370, 377 (4th Cir. 2022) (Wilkinson, J.). Here, for example, does it mean that covered officials violate the injunction if they merely "allow" (*id.*) teachers to refrain from disclosing information about gender identity without student consent? The district court did not say.

Nor did the district court clearly define which government officials are subject to the injunction. By its terms, the injunction covers state defendants' "officers, agents, servants, employees, and attorneys," as well as all "persons in active concert or participation with them." App'x 23. Does that encompass teachers and other school employees? The district court provided no answer.[13] The State is also quite concerned about language in the injunction requiring instructional materials for educators to state that "[p]arents and guardians have a federal constitutional right to be informed if their public school student child expresses gender incongruence." App'x 24-25. Teachers and others could interpret that language as a *mandate* to inform parents of students' gender

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[13] *See also* App'x 24 (requiring the State to provide notice of the injunction within 20 days to "all personnel who are responsible for implementing . . . the enjoined provisions," without making clear if that includes both state and local personnel, including educators and school officials).

identities, even where teachers have no desire to provide that information. The court of appeals did not "clearly and 'demonstrably' err[]," *Planned Parenthood*, 134 S. Ct. at 506 (Scalia, J., concurring), in staying the far-reaching, unclear injunction to prevent confusion and other serious harms during the pendency of the appeal.

CONCLUSION

The application to vacate the stay entered by the court of appeals should be denied.

Respectfully submitted,

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